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3 UNITED STATES DISTRICT COURT  
4 EASTERN DISTRICT OF CALIFORNIA  
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9 IN RE:

10 ADOPTION OF PROCEDURES )  
11 FOR ESTABLISHMENT OF A )  
12 BRADSHAW PANEL IN SACRAMENTO )

GENERAL ORDER NO. 188

13 Pursuant to Bradshaw v. Zoological Society of San Diego, 662 F.2d 1301 (9<sup>th</sup> Cir. 1981)  
14 the attached procedure for the appointment of counsel in Title VII (Title 42 U.S.C. §  
15 2000E5(f)(1)) is hereby adopted by the Court.

16 DATED: January 14, 1986

17 /s/ Lawrence K. Karlton  
18 LAWRENCE K. KARLTON, Chief Judge  
U. S. District Court

19 /s/ Milton L. Schwartz  
20 MILTON L. SCHWARTZ, Judge  
21 U. S. District Court

22 /s/ Raul A. Ramirez  
23 RAUL A. RAMIREZ, Judge  
24 U. S. District Court

25 /s/ Edward J. Garcia  
26 EDWARD J. GARCIA, Judge  
27 U. S. District Court  
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2 UNITED STATES DISTRICT COURT  
3 EASTERN DISTRICT OF CALIFORNIA

4 Pursuant to Bradshaw v. Zoological Society of San Diego (C.A. Cal. 1981) 662 F.2d  
5 1301, the following procedure for the appointment of counsel in Title VII [Title 42 U.S.C.  
6 Section 2000E5(f)(1)] cases are hereby adopted by the Court.

7 1. The court's memorandum and procedure entitled, "Appointment of Counsel in  
8 Title VII Cases," shall be duplicated and provided to all plaintiffs eligible for court appointed  
9 counsel. (Example attached as Exhibit A hereto.)

10 2. The court shall establish and maintain with the Clerk a panel of attorneys for  
11 appointment in Title VII cases. This order shall be publicized in a manner calculated to insure  
12 the widest possible geographical representation of attorneys in the Eastern District. Counsel  
13 shall be compensated, as described below, for reasonable costs expended.

14 Unless subsequent experience dictates otherwise, the panel shall be open to those  
15 members of the bar of this court willing to serve. Counsel shall be appointed on a rotating basis  
16 with due regard, however, for the proximity of counsel's office to the residence of the client and  
17 the court in which the action is pending.

18 3. Regulating cost expenditures and reimbursements, at least at the outset, shall be  
19 handled on a case by case basis with each pre-approved expenditure. A simple form shall be  
20 submitted ex parte for approval by the district court. This form will set out the nature of the  
21 contemplated expenditure, the reason for it, the anticipated amount and a summary of previous  
22 costs. A recommended form titled, "Request for Authority to Incur Costs (Appointed Counsel)  
23 and Request for Payment" is attached as Exhibit B. In the event that costs become excessive, the  
24 judge may either disapprove a contemplated expenditure, schedule a discovery or status  
25 conference or take such other action as is deemed appropriate.

26 4. Due to the responsibilities placed upon counsel in civil matters, e.g. Rule 11 of the  
27 Federal Rules of Civil Procedure, it is important that appointed counsel have a procedure to  
28 facilitate withdrawal when necessary. It is deemed advisable that this procedure allow for a

1 withdrawal motion to be heard in camera by a judicial officer other than the trial judge so as to  
2 minimize prejudice to the plaintiff. Accordingly, rather than the procedure provided by Local  
3 Rule 182(b), when counsel appointed by the court pursuant to this rule desires to withdraw, upon  
4 the filing of the motion, it shall be referred to another district judge or to a magistrate. The  
5 motion shall then be heard ex parte and in camera.

6         5.         It shall be the responsibility of counsel for plaintiff to reimburse the Clerk of the  
7 Court for all costs advanced pursuant to this procedure immediately upon settlement or other  
8 successful resolution of the case. Such reimbursement shall be made prior to any disbursement  
9 to counsel, plaintiff or any other person.

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EXHIBIT A

1  
2 APPOINTMENT OF COUNSEL IN TITLE VII CASES  
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4 The law permits, but does not require, the judge to appoint a lawyer for a Title VII  
5 plaintiff, 42 U.S.C. § 2000e-5(f)(1). A Title VII plaintiff who wants the judge to appoint a  
6 lawyer to represent him must do more than simply ask.

7 A judge of this court must consider three factors in deciding whether or not to  
8 appoint counsel: (1) the poverty of the plaintiff; (2) the efforts of the plaintiff to get counsel for  
9 himself; and (3) the merits of the plaintiff's lawsuit. Bradshaw v. Zoological Society of San  
10 Diego, 662 F.2d 1302 (9<sup>TH</sup> Cir. 1981). A plaintiff who wants the court to appoint counsel for  
11 him must show that he is too poor to hire his own lawyer, that he has made reasonable efforts to  
12 get a lawyer, and that his lawsuit is a likely winner.

13 Poverty generally means that the plaintiff has only enough money to eat and meet  
14 other basic needs. Poverty is shown by filing an Affidavit in Support of an Application for Leave  
15 to Proceed In Forma Pauperis.

16 Reasonable efforts mean that the plaintiff tried the appropriate legal aid offices  
17 and also at least two lawyers without success. The lawyers tried should be lawyers that do,  
18 sometimes, represent people in Title VII actions.

19 The merits of the lawsuit means that the plaintiff is likely, with the help of court-  
20 appointed counsel, to win his lawsuit. Likelihood of success can be shown by producing a Right-  
21 To-Sue letter issued by E.E.O.C. in which the E.E.O.C. determines that there is "probable cause"  
22 to believe that the plaintiff was discriminated against. Otherwise, the plaintiff must explain to  
23 the judge what evidence he will produce if he is provided court-appointed counsel and why this  
24 evidence will show discrimination against the plaintiff.

25 In order to get a judge to consider a request for the appointment of counsel, the  
26 plaintiff must make a motion. The appropriate forms are attached which the plaintiff needs to  
27 make a motion.

28 ///

The first form is called “Motion.” This is the simple request for the appointment of counsel. All the plaintiff need do is fill in the name and number of the case, sign and date the form.

The third form is called “Memorandum of Points & Authorities.” This is a discussion of the law and the facts. In the memorandum the plaintiff explains why he is entitled to the appointment of counsel under the statute and the Bradshaw case. The plaintiff may simply refer the judge to his declarations of poverty and effort, but the plaintiff must be very clear and persuasive on why he is likely to win his lawsuit. The plaintiff must fill in the name and number of the case. He must finish the memorandum with his clear and persuasive explanation of the merits of his lawsuit. He must sign and date the form.

The fifth form is called a “Proof of Service.” It establishes that the plaintiff sent copies of the Motion, Notice of Motion, Memorandum of Points and Authorities, and Declaration to the defendants’ lawyers. The important thing about the Proof of service is that it must be signed by someone other than the plaintiff, someone who is an adult and who actually puts the copies in the envelopes and puts the envelopes in the mail.

- 1) Upon receipt of your right-to-sue letter, begin looking for a lawyer to represent you. Visit a legal aid office (see attached list). If none of those organizations will represent you, then visit two or three lawyers. If none of those lawyers will represent you, then you may file the motion.

1                   2)       Completely fill out the Notice of Motion, Motion, Memorandum of Points  
2 and Authorities and Declaration.

3                   3)       Call the clerk's office. Tell the clerk the number of your case. Ask the  
4 court to tell you the next available date that is at least one month away. Fill in that date on the  
5 Notice of Motion.

6                   4)       Photocopy your papers. Make as many photocopies as there are  
7 defendants, plus two. Have a responsible, adult friend put a set of copies into an envelope for  
8 each defendant's lawyer; seal, address and stamp each envelope, and put the envelopes in the  
9 mail. Then have this same friend fill out the proof of service.

10                  5)       Bring the originals of your papers and the extra two copies to the clerk's  
11 office. The clerk will take the original and one set of the copies. The clerk will return the other  
12 set of copies to you stamped "Original Filed." Keep this set in your file.

13                  6)       Come to the hearing on the date you put on the Notice of Motion.  
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SACRAMENTO DIVISION COUNTIES

LEGAL AID OFFICES

Legal Services of Northern California  
190 Reamer Street  
Auburn, California 95603  
(530) 823-7560  
1-800-660-6107

Legal Center for the Elderly/Disabled  
2862 Arden Way, Suite 200  
Sacramento, California 95825  
(916) 488-5278

Legal Center for the Elderly  
937 Spring Street  
Placerville, California 95667  
(530) 621-6154

Community Legal Services  
McGeorge School of Law  
University of the Pacific  
3200 Fifth Avenue  
Sacramento, California 95817  
(916) 340-6080

Legal Services of Northern California  
515 12<sup>th</sup> Street  
Sacramento, California 95814  
(916) 444-6760



IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

Plaintiff,  
V.

NO.

NOTICE OF MOTION

TO THE DEFENDANTS AND THEIR COUNSEL:

PLEASE TAKE NOTICE that on \_\_\_\_\_  
at the hour of \_\_\_\_\_ a.m., in Courtroom No. \_\_\_\_\_, United States Courthouse, 501 “T” Street,  
Sacramento, California, the plaintiff will move the Honorable Court to appoint counsel to  
represent (him) (her).

DATED: \_\_\_\_\_

Respectfully submitted,

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Plaintiff

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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
v.                      Plaintiff,  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Defendants.  
\_\_\_\_\_

NO.

MOTION FOR APPOINTMENT  
OF COUNSEL

TO THE HONORABLE COURT:

The plaintiff hereby moves for the appointment of counsel to represent (him) (her). This motion is based on the attached memorandum of points and authorities and on the attached declarations.

DATED: \_\_\_\_\_

Respectfully submitted,

\_\_\_\_\_  
Plaintiff

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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA  
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11 \_\_\_\_\_ )  
12 \_\_\_\_\_ )  
13 Plaintiff, )  
14 v. )  
15 \_\_\_\_\_ )  
16 \_\_\_\_\_ )  
17 Defendants. )

NO.

MEMORANDUM OF POINTS  
& AUTHORITIES

18 The plaintiff requests the Court to appoint counsel to represent (him) (her) pursuant to 42  
19 U.S.C. §2000e-5(f). That statute provides, in pertinent part, as follows:

20 Upon application by the complainant and in such circumstances as the  
21 court may deem just, the court may appoint an attorney for such  
complainant . . . .

22 In Bradshaw v. Zoological Society of San Diego, 662 F.2d 130 (9<sup>th</sup> Cir. 1981), the United  
23 States Court of Appeals for the Ninth Circuit identified three factors which the court should  
24 consider in ruling on a motion for appointment of counsel: (1) the indigency of the plaintiff, (2)  
25 the efforts made by the plaintiff to counsel for (himself) (herself), and (3) the merits of the  
26 plaintiff's lawsuit. All three of these factors warrant the appointment of counsel in this case.

27 The plaintiff's indigency is established by the declaration submitted by the plaintiff in  
28 support of (his) (her) Application for Leave to Proceed in forma pauperis. The diligent, but

1 unsuccessful, efforts of the plaintiff to obtain a lawyer to represent (him) (her) are established by  
2 the declaration of the plaintiff attached hereto.

3 The plaintiff has a strong likelihood of success in this action, provided that counsel is  
4 appointed to represent (him) (her), because\_\_\_\_\_

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16 The plaintiff therefore respectfully urges that (he) (she) is entitled to court-appointed  
17 counsel under the authority of Bradshaw v. Zoological Society, supra, and asks the Court to grant  
18 the motion.

19 DATED: \_\_\_\_\_

20 Respectfully submitted,

21 \_\_\_\_\_  
22 Plaintiff

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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 \_\_\_\_\_ )  
11 \_\_\_\_\_ )  
12 \_\_\_\_\_ ) NO.  
13 v. Plaintiff, ) DECLARATION  
14 \_\_\_\_\_ )  
15 \_\_\_\_\_ )  
16 Defendants. )  
17 \_\_\_\_\_ )

18 COMES NOW THE PLAINTIFF AND DECLARES UNDER PENALTY OF  
19 PERJURY:

20 I am the plaintiff in the above-entitled action, which has been brought pursuant to Title  
21 VII of the Civil Rights Act of 1964, as amended, to remedy discrimination in employment on the  
22 basis of (race) (sex) (religion) (national origin).

23 On \_\_\_\_\_, I visited the Community Legal Services  
24 Clinic at McGeorge School of Law, and asked them to represent me in connection with this case.  
25 They refused to do so.

26 On \_\_\_\_\_, I visited the office of Legal Services of  
27 Northern California, and asked them to represent me in connection with this case. They refused  
28 to do so.

1 On \_\_\_\_\_, I visited the law offices of \_\_\_\_\_ and  
2 asked (him) (her) to represent me in connection with this case. (He) (She) refused to do so.

3 On \_\_\_\_\_, I visited the law offices of \_\_\_\_\_ and  
4 asked (him) (her) to represent me in connection with this case. (He) (She) refused to do so.

5 On \_\_\_\_\_, I visited the law office of \_\_\_\_\_ and  
6 asked (him) (her) to represent me in connection with this case. (He) (She) refused to do so.

7 On \_\_\_\_\_, I visited the law office of \_\_\_\_\_ and  
8 asked (him) (her) to represent me in connection with this case. (He) (She) refused to do so.

9 This declaration has been signed on \_\_\_\_\_ in  
10 \_\_\_\_\_, California.

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12 \_\_\_\_\_  
13 Plaintiff  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

_____	)	
_____	)	NO.
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Plaintiff,	)	
v.	)	ORDER
_____	)	
_____	)	
Defendant(s).	)	
_____	)	

Plaintiff, \_\_\_\_\_, is proceeding pro se with an action seeking relief for alleged employment discrimination on the basis of \_\_\_\_\_ under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§2000e, et seq. On \_\_\_\_\_, plaintiff petitioned this Court for an appointment of counsel pursuant to the rationale of Bradshaw v. Zoological Society of San Diego. 662 F.2d 1301 (9<sup>th</sup> Cir. 1981). Pursuant to 42 U.S.C. §2000e-5(f)(1)(B), this Court is empowered to appoint counsel in Title VII actions “in such circumstances as the court may deem just . . .” A trial court’s discretion under said provision is broad, albeit not a matter of right. Bradshaw v. U.S. Dist. Court for S.D. of Cal., 742 F.2d 266 (9<sup>th</sup> Cir. 1981).

The three relevant factors the district court must consider in resolving the request for appointment of counsel are: (1) the plaintiff’s financial resources; (2) the efforts made by

plaintiff to secure counsel; and (3) whether plaintiff's claim has merit. Bradshaw, supra, at 1318.

Upon examination of the record, this Court is persuaded that plaintiff has satisfied all three criteria. First, since plaintiff is proceeding in forma pauperis, the first factor is a fortiori resolved in his favor. Second, since plaintiff has made several unsuccessful attempts to obtain legal counsel, e.g., \_\_\_\_\_, the second factor is likewise satisfied. As to the meritoriousness of plaintiff's claim, this Court finds plaintiff has made a sufficient preliminary showing.

For the foregoing reasons, and good cause appearing therefor,

IT IS HEREBY ORDERED that plaintiff's motion for appointment of counsel is GRANTED;

IT IS FURTHER ORDERED that \_\_\_\_\_  
who has volunteered to serve on the Title VII attorney panel, be appointed as counsel for  
plaintiff.

IT IS SO ORDERED.

DATED: \_\_\_\_\_

UNITED STATES DISTRICT JUDGE



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6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE EASTERN DISTRICT OF CALIFORNIA

8 \_\_\_\_\_ )  
9 \_\_\_\_\_ )  
10 Plaintiff, )  
11 V. ) NO.  
12 \_\_\_\_\_ )  
13 \_\_\_\_\_ ) PROOF OF SERVICE  
14 Defendants. )  
15 \_\_\_\_\_ )

16 COMES NOW THE DECLARANT, WHO DECLARES UNDER PENALTY OF  
17 PERJURY AS FOLLOWS:

18 On \_\_\_\_\_, I served the Motion for Appointment  
19 of Counsel, the Notice of Motion, the Memorandum of Points & Authorities, and the Declaration  
20 on the defendants by depositing true and compete copies in the United states Mail, with first-  
21 class postage fully prepaid, addressed as follows:

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24 This declaration has been signed on \_\_\_\_\_ at  
25 \_\_\_\_\_, California.

26 Respectfully submitted,  
27 \_\_\_\_\_  
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EXHIBIT B

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8 UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA  
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11 \_\_\_\_\_ )  
12 \_\_\_\_\_ )  
13 Plaintiff(s), )  
14 v. )  
15 \_\_\_\_\_ )  
16 Defendants. )  
17

NO.

REQUEST FOR AUTHORITY TO  
INCUR COSTS (APPOINTED COUNSEL)  
AND REQUEST FOR PAYMENT

18 Complete Part I and return it to the court (with two copies) for approval prior to incurring  
19 the cost for which reimbursement is requested.

20 I, \_\_\_\_\_, attorney for plaintiff(s), declare as follows:

21 I was appointed to represent plaintiff(s) in this action on \_\_\_\_\_, 200\_,  
22 by the Honorable \_\_\_\_\_, United States District Judge. I  
23 believe that the following course of action is reasonably necessary to the prosecution of this  
24 action: \_\_\_\_\_  
25 (e.g., deposition of \_\_\_\_\_, defendant herein).

26 I have made reasonable inquiry and believe that the cost of this course of action will not  
27 exceed \$\_\_\_\_\_.  
28

1 I therefore request that this court authorize the expenditure in an amount not to exceed  
2 that stated above for the completion of this contemplated course of action.

3 The following payments of costs have been heretofore approved in this matter:

4	5	6	7	8	9	10
	<u>Amount Approved</u>	<u>Purpose</u>	<u>Amount Paid</u>			

11 I declare under penalty of perjury that the foregoing is true and correct.

12 Signed this \_\_\_\_\_ day of \_\_\_\_\_, 200\_, in \_\_\_\_\_,  
13 California.

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15 \_\_\_\_\_  
16 Attorney for Plaintiff (s)

17 The above expenditure is

18 \_\_\_\_\_ Approved.

19 \_\_\_\_\_ Disapproved.

20 Or,

21 \_\_\_\_\_ Good cause appearing therefor, this matter is set for discovery conference,  
22 pursuant to Rule \_\_\_\_\_, on \_\_\_\_\_, 200\_, at \_\_\_\_\_AM/PM,  
23 in courtroom number \_\_\_\_\_.

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26 \_\_\_\_\_  
27 UNITED STATES DISTRICT JUDGE  
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1 PART II.

2 After securing court approval and after incurring the approved cost, complete this part of  
3 the form and return it to the clerk of the court with two copies.

4 To the clerk of the above-entitled court:

5 I declare under penalty of perjury that I have completed the action contemplated above,  
6 that I have incurred actual cost in the amount of \$\_\_\_\_\_, and that I have paid that cost.

7 I therefore request reimbursement of this cost. I understand and agree that this cost will  
8 be reimbursed out of any recovery or settlement resulting from this action.

9 Signed this \_\_\_\_\_day of \_\_\_\_\_, 200\_, at \_\_\_\_\_,  
10 California.

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13 \_\_\_\_\_  
14 Attorney for Plaintiff(s)  
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